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Supreme Court, U.S.
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No. 96-78

In The

Supreme Court of the United States

October Term, 1995

MARSHALL SPIEGEL,

Petitioner,

v.

STATE FARM FIRE AND CASUALTY CO.,

Respondent.

Petition For Writ Of Certiorari To The Illinois Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Illinois appellate court erred in holding that the State Farm personal liability umbrella policy did not provide coverage for the criminal complaint brought against petitioner because the criminal complaint was not an action for damages.

RULE 29.6 STATEMENT

In accordance with United States Supreme Court Rule 29.6, State Farm Fire and Casualty Company states that its parent company is State Farm Mutual Automobile Insurance Company. There are not any non-wholly owned subsidiaries of State Farm Fire and Casualty Company.

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

State Farm & Casualty Company ("State Farm") respectfully requests that the petition for writ of certiorari filed by Marshall Spiegel ("Spiegel") be denied. The issue of whether an order of restitution in a criminal proceeding is covered by State Farm's personal liability umbrella policy ("State Farm policy") is a hypothetical exercise and not properly before this Court as Spiegel never presented any evidence that restitution was sought in the criminal action against him. Furthermore, this is solely a question of state law and does not raise any federal issue.

JURISDICTION

Respondent objects to petitioner's jurisdictional statement as the jurisdiction of this Court is not invoked pursuant to 28 U.S.C. §1257. No Illinois statute is drawn in question on the ground that it is repugnant to the Constitution, treaties, or laws of the United States nor has any title, right, privilege, or immunity been specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Spiegel has not set forth *any* constitutional provision, treaty, statute, ordinance and/or regulation purportedly involved in this case as required by United States

Supreme Court Rule 24(f). Respondent submits that no such constitutional issue is involved in this case. Illinois case law clearly governs the issue and mandates that Spiegel's petition for writ of certiorari be denied.

STATEMENT OF THE CASE

On May 24, 1993, Spiegel was involved in a confrontation with his neighbors which resulted in an altercation. As a result, Spiegel was charged with the criminal offense of battery in the circuit court of Cook County in criminal case No. 93 MC1-292918 entitled *City of Chicago v. Marshall Spiegel,* filed on May 29, 1993 ("criminal complaint"). Spiegel did not provide State Farm with a copy of the criminal complaint as required as a condition of coverage under the State Farm policy issued to him. Notwithstanding Spiegel's failure to provide a copy of the criminal complaint, State Farm responded with a reservation of rights letter before concluding that the nature of the alleged battery was based on criminal intent. State Farm subsequently denied coverage for the criminal complaint.

The trial court granted summary judgment in favor of State Farm, holding the State Farm policy did not provide coverage or defense with respect to the criminal complaint filed against Spiegel because the criminal complaint was not an action for damages. The Illinois appellate court affirmed summary judgment in favor of State Farm, noting that Spiegel never provided a copy of the criminal complaint to State Farm or to the trial court nor did he produce any evidence suggesting that restitution was sought in the criminal battery complaint filed against

him. The Illinois supreme court denied Spiegel's petition for leave to appeal. At no time in these state court proceedings was a federal question raised.

ARGUMENT

Review is not warranted as the decision of the Illinois appellate court was correct based on the facts before it and on well-established Illinois case law. United States Supreme Court Rule 10 provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Spiegel's petition for a writ of certiorari does not involve any of the above-stated considerations. A United States court of appeals has not rendered a decision in this matter. Further, this case does not involve an important federal question (or any federal question) let alone one that conflicts with the decision of another state court of last resort or a decision of a United States court of appeals. Briefly stated, Spiegel is merely a litigant who is unhappy with the Illinois appellate court's ruling on an issue that is solely a matter of state law. Furthermore, the ruling of the Illinois appellate court is a correct statement of Illinois law.

A. THE CRIMINAL COMPLAINT FILED AGAINST MR. SPIEGEL DID NOT SEEK "DAMAGES"

The Illinois appellate court correctly ruled that the State Farm policy did not provide coverage for the criminal complaint against Spiegel because the criminal complaint was not an action for damages. As noted in the Illinois appellate court's opinion, the State Farm policy provides, "If you are legally obligated to pay damages for a loss, we will pay your net loss minus the retained limit." The State Farm policy defines "loss" as "an accident that results in personal injury or property damage during the policy period" and "net loss" as "the amount

you are legally obligated to pay as damages for personal injury or property damage."

Spiegel suggests that existing precedent and the appellate court's ruling are incorrect because there is the "possibility" that he could have been ordered to pay restitution by a sentencing judge. Spiegel argues that an order for restitution would constitute "damages" thereby requiring State Farm to defend him in the criminal action. As an initial matter, Spiegel did **not** provide a copy of the criminal complaint to State Farm when requesting coverage nor did he attach a copy of the criminal complaint to his complaint against State Farm. Further, Spiegel did not present any evidence that restitution was sought in the criminal case. An appellant has a duty to present the reviewing court with a complete record, and any doubts arising from an incomplete record are therefore resolved against the appellant. *Firkus v. Firkus*, 200 Ill.App.3d 982, 558 N.E.2d 554 (1990). Spiegel's suggestions as to what was sought in the criminal complaint or how the court might have fixed his punishment had he been convicted are merely hypotheticals which in no way trigger coverage under the State Farm policy.

Even assuming *arguendo* that Spiegel had produced evidence that restitution was actually imposed as a result of the criminal complaint, restitution does not constitute "damages" under an insurance policy. Monetary penalties in a criminal case are not "damages" but are penal in nature. See *Shelter Mutual Insurance Co. v. Bailey*, 160 Ill.App.3d 146, 513 N.E.2d 490 (1987). The Illinois appellate court in this case followed *Shelter*, which is directly on point, and held that State Farm did not have a duty to defend Spiegel against the criminal complaint. As Justice

O'Brien's concurring opinion (Petition, A.6) stated, "I believe restitution imposed for a violation of the Illinois Criminal Code does not constitute damages within the meaning of plaintiff's insurance policy as a matter of law." Justice O'Brien emphasized that one must look to the reason for the imposition of an order of restitution. After referencing the Illinois Criminal Code at 730 ILCS 5/5-5-6, Justice O'Brien stated:

> As previously noted, the statute authorizes, when appropriate, restitution 'as a result of *convictions* for offenses . . . .' It further speaks in terms of [determining] at the sentencing hearing . . . whether restitution is an appropriate *sentence* to be imposed on each defendant *convicted* of an *offense*. When the foregoing language is read together, I believe it demonstrates a legislative intent to make restitution a penalty for the commission of a criminal offense and not merely a substitute for civil damages. Words such as 'convictions', 'offenses', and 'sentencing hearing' do not connote a forum where the ultimate disposition is meant to be an order for civil damages. Since restitution in the context of the above language connotes the penalty or punishment for a criminal offense, I believe it would be against public policy to either indemnify or defend an insured who is prosecuted for a criminal offense. (Emphasis added)

Spiegel has continued to cite the same case law, all of which is clearly distinguishable. In fact, Spiegel has not cited any case which deals with whether or not restitution constituted "damages" under an insurance policy. State Farm cited case law which directly addressed the issue of whether or not restitution constitutes "damages"

under an insurance policy and these courts answered the question in the negative. See *Jaffe v. Cranford Insurance Co.*, 168 Cal.App.3d 930, 214 Cal.Rptr. 567 (1985); *State Farm Fire & Casualty Company v. Pahl*, 191 Cal.App.3d 74, 236 Cal.Rptr. 216 (1987).

Spiegel was charged with the offense of **criminal** battery. Had Spiegel been convicted and his sentence been a fine, this fine would be Spiegel's penalty or punishment for the commission of a crime. Had Spiegel been convicted and his sentence been imprisonment, this imprisonment would be Spiegel's penalty or punishment for the commission of a crime. Similarly, had Spiegel been convicted and his sentence been restitution, this restitution would be Spiegel's penalty or punishment for the commission of a crime. Neither a fine, imprisonment nor court-ordered restitution are the result of "an accident which results in . . . property damage" as required by State Farm's policy. It would be against public policy for State Farm to defend or indemnify Spiegel for his criminal acts and the penalties or punishments that result from those criminal acts. See *Beaver v. Country Mutual Insurance Co.*, 95 Ill.App.3d 1122, 420 N.E.2d 1058 (5th Dist. 1981) (insurance against criminal fines or penalties would be void as against public policy).

B. THE STATE FARM POLICY DOES NOT CONTAIN CONFLICTING CLAUSES

Spiegel correctly states that the State Farm policy grants coverage for certain intentional torts, including assault and battery. If a civil complaint had been filed against Spiegel alleging one of the covered intentional

torts, State Farm would have provided coverage. However, Spiegel was not alleged to have committed an intentional tort and there was not a civil complaint seeking damages filed against him as a result of the events of May 24, 1993. Spiegel was alleged to have committed a *crime* for which the State Farm policy did not provide coverage.

C. SPIEGEL'S SUGGESTION OF DOUBLE JEOPARDY IS WITHOUT FOUNDATION

On pages 4-5 of the petition, Spiegel cites *United States v. Ursery*, 1996 W.L. 304815 (U.S. 1996) and suggests that in some fashion he has been or could be subjected to double jeopardy. The *Ursery* case dealt with civil forfeiture proceedings under 21 U.S.C. § 881(a)(6) and (7) instituted against defendants in concert with various criminal drug prosecutions. This Court held that civil *in rem* forfeitures were not "punishment" for purposes of the double jeopardy clause. The double jeopardy clause does not apply to this case as Spiegel was only *once* charged with a crime and any hypothetical *civil* suit would not trigger any constitutional question with respect to double jeopardy clause. There has only been one criminal charge filed against Spiegel and he was acquitted of that charge. Apparently Spiegel maintains that he might have been sued in a civil action for damages and that had damages been awarded, those civil damages would have duplicated the criminal punishment of restitution that might have been ordered had he been found guilty of assault and battery. Spiegel's argument is entirely hypothetical as

none of those events occurred. Furthermore, his position is without merit even if those events had occurred.

Spiegel was accused of a crime. At no time was there a second criminal proceeding against him nor was a civil proceeding for damages filed against him. Nonetheless and even assuming such a civil action, the double jeopardy clause would not be triggered. Civil actions frequently proceed against individuals who commit criminal offenses. For example, a person involved in an automobile accident can be convicted and punished for a criminal offense such as drunk driving or manslaughter and can also be subject to a civil suit for damages based upon the same automobile accident. That individual's criminal punishment (be it a fine, restitution or imprisonment) does not bar the civil action. Similarly, any punishment that might have been imposed on Spiegel had he been convicted (be it a fine, restitution or imprisonment) for committing the crime of battery would not bar a civil action against him nor would it raise an issue under the double jeopardy clause.

CONCLUSION

The Illinois appellate court properly affirmed summary judgment in favor of State Farm & Casualty Company based on the facts before if and well-established Illinois precedent. The Illinois supreme court properly denied Spiegel's petition for leave to appeal. There are not any grounds for Spiegel to seek review of this decision and State Farm respectfully requests that Spiegel's

petition for writ of certiorari be denied. State Farm further requests an award of just damages and double costs against Spiegel pursuant to United States Supreme Court Rules 42 and 43 as this petition for writ of certiorari is frivolous and without any basis in fact or law.

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